

Exhibit 1c

to Bryan Mazur's Declaration

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STACY HOLK, on behalf of \$
Herself and all others \$
similarly situated, \$

Plaintiff

VS.

CIVIL ACTION

NO. 3:07-CV-03018-MJC-JJH

SNAPPLE BEVERAGE
CORPORATION,

Defendant

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EVAN WEINER and TIMOTHY	\$
MCCAUSLAND on behalf of	\$
themselves and all others	\$
similarly situated,	\$

Plaintiff,

VS.

CIVIL ACTION

NO. 07-cv-08742

SNAPPLE BEVERAGE
CORPORATION

Defendant

ORAL DEPOSITION OF
KEITH UGONE, Ph.D.

APRIL 16, 2010

CONFIDENTIAL

Page 134

Page 136

1 Q. [REDACTED]
 2 [REDACTED]
 3 A. [REDACTED]
 4 Q. [REDACTED]
 5 A. [REDACTED]
 6 Q. From the all natural. But in paragraph 71 you're
 7 indicating that if plaintiffs' allegations were true, one
 8 would expect that Snapple would be charging a higher price
 9 for its all natural beverages compared to its diet
 10 beverages, that's your conclusion, correct?
 11 A. Just ask the question again.
 12 Q. Okay.
 13 A. Slowly.
 14 Q. In paragraph 71 --
 15 A. Yes.
 16 Q. -- it says if plaintiffs' allegations were true
 17 you would expect Snapple to be charging a higher price for
 18 its all natural ice tea and juice drinks than for its own
 19 diet ice teas and juice drinks.
 20 A. Which are not all natural, yes.
 21 Q. Which are not all natural.
 22 A. Yes.
 23 Q. Okay. That's a conclusion that you made?
 24 A. Based on my understanding of the plaintiffs'
 25 allegations that the all natural labeling allows Snapple to

1 the content of what's in the bottles.
 2 Q. If there was -- if there was going to be a gain
 3 had -- if there's going to be a gain had by Snapple
 4 through -- through the allegations that plaintiffs make
 5 that it's deceptive in its advertising in order to get a
 6 profit, that gain is going to be recognized at Snapple's
 7 wholesale pricing level?
 8 A. Because that's where they get their revenue from,
 9 yes.
 10 Q. Okay. Now, in regard to [REDACTED] my
 11 question is: Did you give any consideration to the fact --
 12 and let's assume -- let's assume that there are -- for
 13 purposes of this conversation right now, let's assume that
 14 there is a price premium.
 15 A. Okay.
 16 Q. Okay?
 17 A. Okay.
 18 Q. Let's assume --
 19 A. I feel obligated to say contrary to the evidence,
 20 but go ahead.
 21 Q. That's -- say what you want.
 22 A. Okay.
 23 Q. Let's assume that there's a price premium.
 24 A. Yes.
 25 Q. Okay. Did you give any consideration to the fact

Page 135

Page 137

1 charge a higher price, okay, now we've got a fork in the
 2 road there. Because what actually happens at the retail
 3 level in terms of what consumers are paying, because the
 4 supply and demand conditions that give that final retail
 5 price. What I'm saying is, if you take a step back and
 6 just look at what Snapple receives --
 7 Q. Right.
 8 A. -- because that would be the gain to Snapple as
 9 opposed to a gain to a distributor or a gain to a retail
 10 outlet --
 11 Q. And if I can just clarify.
 12 MR. BECKWITH: Let him finish.
 13 Q. (BY MR. LAPINSKI) Okay. Go ahead. I'm sorry.
 14 Finish.
 15 A. So my point is that there can be things happening
 16 at the retail level that's a function of supply and demand
 17 conditions at the retail level and what the pricing
 18 strategies are of the retail outlets. There's a similar
 19 set of situations at the distributor level, but if Snapple
 20 was trying to extract a gain from an alleged mislabeling
 21 associated with all natural, you would expect to see
 22 evidence of a gain being extracted to Snapple. So you look
 23 to the [REDACTED]
 24 [REDACTED]
 25 [REDACTED] You don't see any differentiation based on

1 that if there is a price premium that allows Snapple to
 2 charge two extra cents for its product, did you give any
 3 consideration to the fact that from a [REDACTED]
 4 standpoint it's possible that Snapple increased the cost of
 5 its diet beverages two cents as well in order to take
 6 advantage of that price premium in its diet products also?
 7 MR. BECKWITH: Objection: Hypothetical,
 8 assumes facts.
 9 A. That analysis would require that Snapple and
 10 Dr Pepper behave suboptimally on their pricing of their
 11 diet products. What you're saying is, is that -- I
 12 think -- I'm going to now fill in what I think you're
 13 saying to me, is you're saying, Hey, Ugone, you don't see a
 14 difference because they raise the diet price, and that
 15 allows them to maintain this hidden price premium, but that
 16 then requires a premium to be in the diet side, which is
 17 suboptimal because that would then be above the market
 18 price for the diet products. That's why that wouldn't make
 19 any sense.
 20 Q. (BY MR. LAPINSKI) What do you mean by it would
 21 be suboptimal for the diet products?
 22 A. Okay. It's a competitive market. Firms are
 23 profit maximizers. Depending on the market conditions,
 24 there's times that market forces or pressures are imposed
 25 on the competitor. There's nothing you can do about that.

Page 138

Page 140

1 The market conditions say the price of a diet drink is
2 going to be 75 cents. And they -- the competitor can't
3 suddenly say, Aha, I'm going to charge 77 cents. Because
4 as soon as you start charging the 77 cents, you've now
5 overpriced your product relative to the market forces, it
6 would be suboptimal and you would lose sales that would
7 make that course of behavior unprofitable. That's what I'm
8 saying. So as soon as you try to say, you don't see a
9 premium because they've raised the price -- as a
10 hypothesis. I'm assuming you're asking --

11 Q. Right.

12 A. -- this as a hypothesis.

13 Q. It's a hypothesis.

14 A. So a hypothesis is, I don't see a differential.
15 I don't see an extraction on the all natural products
16 because they raise the price of the diet products. And I'm
17 saying, Well, if you're raising the price of the diet
18 products, you're now charging too much for the diet
19 products relative to the attributes of the diet products.
20 That would make those products expensive relative to the
21 competition. They would lose sales and so it would be a
22 suboptimal course of behavior to do that.

23 Q. It'd lose sales and they'd also lose profits?

24 A. That's my point.

25 Q. So instead -- instead what you are saying is that

1 (Requested portion was read.)

2 Q. (BY MR. LAPINSKI) Would you agree that in [REDACTED]
3 [REDACTED] a marketer may offer a product at a cost -- at cost
4 if the incremental sales revenue of another product
5 outweighed the loss?

6 A. Just ask the question again.

7 Q. Would you agree that in [REDACTED] a marketer
8 may offer a product at cost if the sales revenue of another
9 product outweighed the loss?

10 A. I would ask the question, why would they take any
11 loss if the price of -- let's just take an example. And
12 let's say we have one diet peach tea drink and an all
13 natural peach tea drink. If the market price at the
14 wholesale level for diet peach tea is 50 cents and if the
15 market price for all natural is 55 cents, going along with
16 plaintiffs' allegations as I understand them, then I would
17 expect the entity that had the products to charge 50 cents
18 for the diet and 55 cents for the -- for the all natural.
19 As soon as you start deviating from that, if you made the
20 diet 55 cents, then you'd be losing diet sales, why would
21 you do that. If you -- if you made the all natural
22 50 cents, you'd be losing revenues on a per unit basis from
23 the all natural sales, why would you do that.

24 Q. So you wouldn't want to -- you wouldn't want to
25 drop the 55-cent product down to 50 cents?

Page 139

Page 141

1 Snapple's willing to lose profits on its all natural teas
2 by dropping that price down to the price of diet products?

3 A. No, I didn't say that at all.

4 Q. Then -- then explain to me how -- what you're --
5 what you're saying then, if I'm correct, is that -- and
6 actually you've said it here, because they [REDACTED] there
7 can be no premium?

8 A. There's no evidence of an extraction of the
9 premium. In this section here. Okay, there's other places
10 where I'm saying it.

11 Q. Right. Okay. We're just dealing with this
12 section here.

13 A. In this section here.

14 MR. BECKWITH: Now, let's get a Q and A
15 going.

16 Q. (BY MR. LAPINSKI) Go ahead. There's a question
17 out there.

18 A. Okay. In this --

19 MR. BECKWITH: Well, wait. All I heard was
20 in this section here, that's not a question.

21 MR. LAPINSKI: No, he -- okay. Hang on.
22 For purposes of clarification, he said "In this section
23 here," and I just agreed, yes, limiting his answer to this
24 section here. So if you could read back the last question
25 that was asked.

1 A. Nor would you increase the 50-cent product up to
2 55.

3 Q. But from an economic standpoint, if you were to
4 consider the five cent incremental profit that you make at
5 increasing the product and compare it to the reduction in
6 the overall volume that you have, there may be a price
7 point there where it does make sense to do that --

8 A. No.

9 Q. -- would you agree?

10 A. No, no. Absolutely not.

11 Q. So what you're saying is, as soon as the cost
12 goes up -- as soon as the cost is raised above 50 cents
13 using your example --

14 A. I'm sorry, let's be a little careful, price.

15 Q. Okay. As soon as the price goes up above
16 50 cents for the diet Snapple product, there's no economic
17 analysis that shows that there's a cost -- a profit benefit
18 to doing that?

19 A. Right. And let me explain why. There's the
20 55 cents and the 50, let's say those are the profit
21 maximizing prices. As soon as you deviate from profit
22 maximizing prices, you either lose sales -- unit sales or
23 you lose revenue you could have otherwise had. So if you
24 have 50 and 55, why would you bring the 55 down to 50 when
25 you could have gotten 55. That doesn't make sense. Why

Page 142

Page 144

1 would you bring the 50 up to 55 because then you'd lose
2 unit sales? Why would you do that when the best outcome is
3 the 50, 55? You have two different prices. You wouldn't
4 have the same price. There's no -- I cannot conceive of a
5 situation where if a price is 55 and 50 that it would be
6 profit maximizing to change those prices and make it equal.

7 Q. Well, you said that one of the considerations is
8 [REDACTED] that -- that you thought was considered by
9 Snapple was that cost of shipping and cost of packaging,
10 were something that would --

11 A. Was an input in that decision making.

12 Q. Was an input in that decision. When you take the
13 cost of shipping and the cost of packaging and you add that
14 into the equation so that it becomes less expensive from a
15 shipping standpoint, less expensive from a packaging
16 standpoint in order to have [REDACTED] that goes into
17 your profit maximization analysis as well; does it not?

18 MR. BECKWITH: Objection, hypothetical.

19 A. What you would have probably is that in both
20 those situations the cost of shipping of those two
21 products -- since they're essentially identical for the
22 sizes and the packages would be the same.

23 This is -- let me give you an easy example.
24 It's like you owning two houses next door to each other.
25 One has a value of 250,000. The other has a value of

1 Q. (BY MR. LAPINSKI) But you didn't -- you didn't
2 do any analysis in regard to that. You didn't do -- you
3 make the conclusion that if plaintiffs' allegations were
4 true there would be a difference between the regular and
5 the diet. There would be a difference in price charged by
6 Snapple between the regular and diet?

7 A. I'm going along with plaintiffs' allegations that
8 an all natural claim commands a price premium in the
9 marketplace --

10 Q. And --

11 A. -- with respect to the Snapple products and that
12 it's based on the all natural claim.

13 Q. But you didn't inquire at all as to whether or
14 not Snapple raised the price of its diet product in order
15 to also benefit from that premium?

16 MR. BECKWITH: Objection, asked and
17 answered.

18 A. I did not ask that specific question, but I gave
19 you the economic analysis of why it would not make any
20 sense. And I gave you the observation that the data does
21 not support the concept that it was an extraction of extra
22 profits correlated with all natural labeling.

23 Q. (BY MR. LAPINSKI) You didn't do specific
24 inquiry, but based upon your economic understanding of --
25 of markets?

Page 143

Page 145

1 230,000. And you say, I'm going to sell both for 250.
2 Good luck. Or you say, I'm going to sell both for 230.
3 Okay. You're giving up \$20,000. That's what I'm trying to
4 say with that example, maybe it's easier to see if you own
5 two houses.

6 If Snapple could get an extra nickel on the
7 all natural products and under plaintiffs' contention that
8 with it's all natural labeling that there's a price premium
9 in there, my -- what I'm positing is I would expect to see
10 some differential prices where Snapple was trying to
11 extract the gain from that. I'm just saying we don't see
12 that in the pricing data.

13 Now, I need to say one more thing. We're
14 looking at one factor in isolation. I don't necessarily
15 draw my conclusions on just one analysis I've done in
16 isolation. It's the totality of what's in my report. But,
17 clearly, one input I'm looking at is the [REDACTED] at
18 Snapple. That's consistent with the conclusion that I
19 don't see any price premiums. But having said that, I
20 don't see any evidence that Snapple has been extracting any
21 gain from that all natural, or that the market -- another
22 converse way to say it -- conversely, is that the market
23 allowed them to extract a gain from that all natural
24 label. We don't see that in that pricing. That's what I'm
25 saying.

1 A. Markets and pricing.

2 Q. Markets and pricing?

3 A. And the fact that when you price suboptimally, a
4 price being too high or another price being too low, that
5 you'll end up with suboptimal profits.

6 Q. So is it fair to make a generalized statement
7 that where organizations [REDACTED] there is no difference
8 between -- there is -- there is no difference between
9 the -- strike that.

10 Do you know if Snapple [REDACTED] during
11 the entire class period?

12 A. All the price lists I've seen have [REDACTED]
13 And my understanding is that that has been a company
14 policy. I believe I asked that question. I don't have
15 price lists for the entire time period, but that's my
16 understanding.

17 Q. Are you aware of whether or not the market
18 perceived Snapple diet beverages to be all natural?

19 A. Just ask the question again.

20 Q. Are you aware of whether or not the consuming
21 market perceived Snapple's diet beverages to be all
22 natural?

23 A. All right. Two part answer. Part number one, I
24 didn't do an inquiry into whether the consuming public
25 considered diet to be all natural. I have strong

<p style="text-align: right;">Page 146</p> <p>1 suspicions that the consuming public in general, although I 2 don't have any empirical basis for saying this, believes 3 that diet products are not all natural. I would be very 4 surprised if somebody did a study and came back with a 5 conclusion that diet products were all -- considered to be 6 all natural. 7 Q. If the consuming public did consider Snapple's 8 diet products to be all natural, would that -- would that 9 have an impact on your conclusion in regard to [REDACTED] 10 here? 11 MR. BECKWITH: Objection, assumes facts. 12 And I assume you're stipulating, they're not 13 labeled as such. There's no evidence of labeling as such. 14 MR. LAPINSKI: Not -- I haven't said that 15 the label -- 16 MR. BECKWITH: Objection, assumes facts not 17 in evidence. 18 A. And I would say that's exactly my point. That -- 19 let's go with your hypothesis that -- or the assumption 20 you're asking me to make. You said, Ugone, assume diets 21 viewed as all natural, but it doesn't have the all natural 22 label. Under your theory there would be a premium on the 23 all natural products because of the label over the diet 24 products. And we don't see that. 25 Q. (BY MR. LAPINSKI) But from your analysis if</p>	<p style="text-align: right;">Page 148</p> <p>1 report you say that the average retail price data shows no 2 systematic or persistent price premium relative to the 3 benchmark products; is that correct? 4 A. Yes. 5 Q. And in making that determination you go 6 through -- you go through an analysis that I'll refer to as 7 a benchmark analysis. 8 A. Okay. 9 Q. Is that correct? 10 A. I can accept that terminology, sure. 11 Q. And you use your -- this benchmark approach to 12 show that there's no price premium based upon an analysis 13 of the retail price? 14 A. Let's be a little careful in the phraseology -- 15 Q. Okay. 16 A. -- and the description because I'm saying a 17 little bit more than that. 18 Q. Okay. 19 A. What I'm saying is, is that over time in 20 different geographic areas and in different package sizes 21 and with promotions and coupons and shopper cards, and when 22 you look at average retail prices and every day prices and 23 promotion prices, you have a wide variation and dispersion 24 of prices at the retail level for the Snapple products, so 25 that's the backdrop for everything.</p>
<p style="text-align: right;">Page 147</p> <p>1 there was a perception that diet products were all natural, 2 that would -- that would -- that would raise a consumer's 3 willingness to pay more for that product? 4 MR. BECKWITH: Objection: Asked and 5 answered, calls for speculation. 6 A. It's not my assumption. It's your assumption 7 that the market will pay more for all natural. Then you 8 asked me to assume that the diet products were perceived as 9 all natural. So under your two assumption you've asked me 10 to make that means that the diet products would have a 11 slightly higher price because they're perceived as all 12 natural, under your set of assumptions. But your 13 allegations in this case is that the all natural label, 14 because of that labeling, created an extra premium. And 15 I'm saying that's exactly the point, we don't see a 16 premium. That all natural label even under your 17 assumptions you've asked me to make did not create a 18 premium. Because under your theories there will be a 19 premium on the all natural label. 20 Q. (BY MR. LAPINSKI) If you would turn to page 36 21 of your report, Doctor. 22 A. I'm there. 23 MR. BECKWITH: 36? 24 MR. LAPINSKI: 36. 25 Q. (BY MR. LAPINSKI) In section eight of your</p>	<p style="text-align: right;">Page 149</p> <p>1 I then say, What's the data I do have? I 2 can see all these variations, but I do have average retail 3 data. I do have average every day price data and average 4 promotion data. Now, I know that masks some of the 5 variations that you need individual inquiries to figure 6 out. But given that limitation, let me just see what 7 conclusions I can draw from the average data that I do 8 have. And on average, using that data, I don't see any 9 systematic or persistent price premium based on this 10 comparison of averages recognizing that that does mask a 11 lot of the variation we see in the data, that you would 12 need individual inquiry to resolve how much consumers pay. 13 Now, I know that was a whole big long answer and we can go 14 to shorthand if you want, but I just want to make sure we 15 understood what this section's saying. 16 Q. Understood. Now, going to -- going to the 17 shorthand. You do implement a benchmark approach in order 18 to support your conclusion that there's no systematic or 19 persistent premium price relative to the benchmark 20 products, correct? 21 A. Yes. 22 Q. Okay. And what's the basis for your 23 implementation of this approach as far as an economic 24 analysis is concerned? 25 A. If I understand your question, and you'll be able</p>

Page 150

Page 152

1 to tell by my answer whether I do or not. I'm working off
2 my understanding of the plaintiffs' allegations. My
3 understanding of the plaintiffs' allegations and
4 contentions are that there was this mislabeling. That it
5 was -- the Snapple all natural products were labeled
6 inappropriately all natural, and that that allowed Snapple
7 to charge a higher price relative to a benchmark to
8 something that doesn't have the all natural. So what I was
9 trying to do is say, okay, what are the plaintiffs
10 alleging. And given my understanding of what the
11 plaintiffs are alleging, can I do an empirical
12 investigation to see what happens when I start trying to
13 figure out is there any empirical merit to what the
14 plaintiffs are alleging. That's why I did this.

15 So at that point the next step is, well, if
16 this is allegation of a price premium because of the
17 labeling, okay, one has to figure out, okay, what does
18 price premium mean, what is that in comparison to. And
19 that's going down the path of what we did in this section.

20 Q. Okay. The benchmark approach that you used
21 that's an empirical investigation that you did?

22 A. Yes.

23 Q. And that's -- that's a common economic approach?

24 A. Here's what I need to say. An economist has a
25 tool kit. And when there's a problem that needs to be

1 Q. You're not contesting the fact that the yardstick
2 approach that Dr. Goedde spoke about is not a sound
3 economic tool; is that correct?

4 A. What I'm not contesting -- this actually --
5 interestingly, goes back to what I said about Daubert
6 challenges, whether the courts look at generally accepted
7 methodologies and then look at is a generally accepted
8 methodology being used in the right circumstance. My
9 criticisms of Dr. Goedde, which we'll get to later is that
10 latter. But having said that, a yardstick or a benchmark
11 approach is clearly a tool of the tool kit of an economist.
12 The question is, is it the right to tool to answer a
13 particular question.

14 Now, where I disagree with Dr. Goedde is, in
15 this case the yardstick will not yield common proof answers
16 for an entire class, so it's inappropriate here. But I'm
17 not going to say that benchmarking or a yardstick is
18 inappropriate in general because that's not true. I'm
19 saying there's times that it's inappropriate to apply it
20 depending on the facts and circumstances.

21 Q. And one of the reasons in this case that you find
22 it to be inappropriately applied by Dr. Goedde is because
23 of variations in the retail price, correct?

24 A. One of many reasons, but, yes, the wide variation
25 in retail price is one of the reasons.

Page 151

Page 153

1 solved, you look into your tool kit and say, What's the
2 appropriate tool to take out to address that problem? So
3 here's where I want to be careful. For the appropriate
4 question that needs to be addressed, benchmarking or
5 yardstick may be an appropriate tool, it's not going to be
6 an appropriate tool for everything, but if you have to do
7 something that lends itself to a benchmarking analysis,
8 yes, that's an appropriate tool.

9 Q. Okay. And it's -- the benchmark tool is -- is a
10 reliable tool from an economic standpoint?

11 A. Properly used.

12 Q. Okay. And it's something that's been tested?

13 A. I'm not sure what testing means. I can say this,
14 that in the profession there's times when you'll use a
15 benchmarking approach and that it makes sense as long as
16 you're applying it to the appropriate set of circumstances,
17 yes, that's a generally accepted technique given the facts
18 and circumstances.

19 Q. And I believe you just -- a question or two ago
20 referred to benchmarking and yardsticking.

21 A. Yes.

22 Q. Would you consider those two to be similar?

23 A. Synonymous.

24 Q. Okay.

25 A. I was using the term synonymously.

1 Q. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 For purposes of this litigation in
6 implementing a benchmark approach in order to determine a
7 price premium, why would you not use the wholesale price
8 charged by Snapple?

9 A. This is actually what I was trying to say before.
10 My opinions are based on the totality of everything in my
11 report. And so I tried to look at the available evidence
12 from every different direction and every different
13 cross section. [REDACTED]
14 [REDACTED]

15 [REDACTED] There is a section in my
16 report that looks at distributor pricing. There is a
17 section in my report that looks at the retail prices, based
18 on geography, channel of distribution, size, flavor. So I
19 tried to look at every which way I could, so I did do what
20 you asked.

21 Q. One of the -- one of the conclusions that you
22 reached in your report is that you can't use a yardstick
23 approach in order to determine a price premium in this
24 situation because of fluctuations in retail price. Is that
25 a fair statement of -- of --

<p style="text-align: right;">Page 154</p> <p>1 A. I would call it shorthand but because of the 2 difference in prices across geographic areas, across time, 3 across channel distribution, across promotions and stores, 4 across the use of coupons, [REDACTED] 5 [REDACTED] I'm just roundly speaking. And so 6 you can't use a yardstick approach and say each person 7 overpaid by five cents. That wouldn't make sense given the 8 variations we see in all the data. 9 Q. And my question is: When looking to analyze for 10 a premium price, why would you not look at the wholesale 11 price? Why are you looking at the retail price? 12 A. And I'm saying two things. One, I did. And, 13 two, because my understanding of the evidence you put forth 14 is named plaintiffs who contend that they paid more because 15 of the all natural labeling. That's what was in their 16 deposition. And so I looked at that because I felt that 17 was responsive to an inquiry that the plaintiffs were 18 talking about. 19 Q. You looked -- excuse me. You looked at 20 wholesale -- in response to my question, the first thing 21 you said was I did. 22 A. Yes. 23 Q. [REDACTED] 24 [REDACTED] 25 A. [REDACTED]</p>	<p style="text-align: right;">Page 156</p> <p>1 channels they were selling it, understand the pricing, and 2 then make sure I was drawing the proper inferences or that 3 benchmarking is a proper technique. Because I'm going from 4 okay, we can mechanically do a benchmarking until something 5 is theoretically sound. But, yes, I could do a 6 benchmarking, I just would take care in making sure I draw 7 the proper conclusions from that. 8 Q. Right. There are various factors -- if I 9 understand what you're saying, you wouldn't take the 10 Snapple product and the benchmark product and say wholesale 11 price A, wholesale price B, oh, there's a premium, there's 12 other factors that may be going into there? 13 A. That's what I would look at, yes. 14 Q. And you would look at those other factors in 15 order to make a determination whether or not any of those 16 factors had an impact on the price of each product? 17 A. Correct. 18 Q. And whether or not it played a role in the 19 differential between the prices? 20 A. Correct. 21 Q. And if you did that using wholesale pricing, then 22 that would remove from the equation the issues that you 23 have raised in your report in regard to the use of retail 24 pricing. Coupons, the use of a coupon would no longer be 25 relevant to the analysis; is that correct?</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. Did you look at wholesale pricing from -- 2 and consider wholesale pricing from a benchmark approach? 3 A. I did not have that data. 4 THE REPORTER: I'm sorry, did not? 5 THE WITNESS: Have that data. 6 A. But I didn't see within Snapple evidence of an 7 extraction of a gain from the all natural. Maybe -- I 8 realize now I misunderstood what you were saying 9 previously. 10 I did look at the wholesale level based on 11 the data I had for what Snapple charges. And I didn't see 12 evidence within Snapple that relative to their other 13 products of Snapple products that they extracted a gain. I 14 did not have wholesale data for benchmark products of what 15 they sell to their distributors. I just don't have that. 16 Q. (BY MR. LAPINSKI) With wholesale data for 17 benchmark products, would you be able to do a benchmark 18 analysis? 19 A. Yes, with an asterisk. You can always do a 20 benchmarking but you have to be careful about the 21 conclusions you draw if you see differences, what does it 22 mean, just like you were asking me a series of questions. 23 Those are all the types of questions that I would ask that 24 if I did a benchmarking at the wholesale level, I'd want to 25 make sure I understood what the companies were doing, what</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Actually, I have to disagree with you a little 2 bit, because there's different sorts of promotions. There 3 could be something like a shopper card that the grocery 4 store sponsors. I'll use that term. But things like 5 coupons could be sponsored at the manufacturer level, so I 6 can't agree with what you just said. 7 Q. How would a coupon affect the wholesale price? 8 A. The net net, the effective price changes. 9 Q. Can you describe for me what you mean by the 10 effective price changing? 11 A. Well, ultimately the price of the product -- 12 there's two ways to look at it. The price of the product 13 is a derived demand. So you look at the final product 14 price, what are people willing to pay, you get a price that 15 the retailer buys at. That's derived from what the 16 consumer's willing to pay. 17 You get what the distributor's willing to 18 sell for, but that's a derived demand from the final 19 product. You get the price at the Snapple level, but again 20 it's derived from the final price that people are willing 21 to pay. So that's the first thing. With a coupon, those 22 prices are changing at the output level. But, two, the 23 other point I was making is, to the extent that those 24 rebates are coming from the manufacturer level then the net 25 price to the manufacturer is different after the rebates on</p>

Page 158

Page 160

1 the coupons. So that's what I'm saying, you just want to
2 be very careful in the analysis.

3 Q. Well, the net price charged by the manufacturer
4 does not change based upon the use of a coupon?

5 A. Let's agree to this: It depends on the mechanics
6 of how it's working. But I will say this, the list price
7 may not change, but there could be an impact on the net
8 effective revenue.

9 Q. So in the use of coupons the initial wholesale
10 price minus the coupon value would equal the net wholesale
11 price?

12 A. I would want to understand the mechanics of how
13 they work, so I can see things working differently. All
14 I'm saying is, if there ends up being some sort of
15 subsidization or some reason why the average revenue would
16 decline at the manufacturer level, all I'm saying is you'd
17 want to take that into account.

18 Q. Now, you're --

19 A. That's just one of those factors to look at when
20 you're doing your benchmarking.

21 Q. Okay. And in doing your benchmarking, you were
22 able to use [REDACTED] as your benchmark
23 product?

24 A. One of them.

25 Q. One of them?

Page 159

1 A. Yes.

2 Q. And it's not your position that [REDACTED]
3 [REDACTED] is the only benchmark product that's out there?

4 A. Correct.

5 Q. Did you do any -- did you do any research into
6 the existence of other benchmark products for purposes of
7 your analysis?

8 A. Well, we looked at [REDACTED] and looked at [REDACTED]
9 and we looked at [REDACTED]

10 Q. Okay. In regard to ice teas, other than [REDACTED]
11 and [REDACTED] did you look to see whether or not there
12 were any other products that would be considered benchmark
13 products?

14 A. If I understand your question, a combination of
15 data we had available, my understanding of the attributes
16 of the Snapple products, let's say the ice tea products
17 with the all natural label. We tried to do what I call --
18 it's a Latin term that they use in economics all the time
19 ceteris paribus, some people say ceteris paribus. What
20 that means is holding all other factors constant. So what
21 an economist does -- and this is part of an economist's
22 tool kit, is to let me -- if I'm going to do an analysis,
23 just change one thing at a time and see what that impact of
24 that one change is. So whenever an economist says ceteris
25 paribus, that's what they mean. I'm going to do a ceteris

1 paribus experiment. I'm only going to change one thing and
2 see the impact. That gives us guidance on some of these
3 analyses, especially a benchmarking. If you want to see
4 the impact on price of a particular attribute. And if
5 you're going to use as a benchmark other products, while it
6 may not be perfect, you want to minimize the differences
7 between the two products except for that one attribute.
8 That's kind of the theory behind what we were doing on the
9 benchmarking.

10 Q. So with the benchmarking you were able to take
11 into consideration various attributes of the Snapple
12 product?

13 A. Things like hot filled, glass bottle, market
14 segment; all of those factors, yes.

15 Q. And in doing that --

16 A. No preservatives, no artificial flavoring. And
17 so what we were trying to do is rather than look at
18 products where two, three or four of those things may be
19 different, you're trying to minimize those differences so
20 you can at least attempt to draw more meaningful
21 conclusions if a price difference was observed.

22 Q. And from an ice tea standpoint, you were able to
23 look at the attributes and find [REDACTED] as
24 one of the benchmark products?

25 A. Right. So with [REDACTED] and with the

Page 161

1 Snapple all natural ice tea, you've got the hot filled and
2 all the implications of that, no preservatives, because
3 that's the second attribute, you got the glass bottle,
4 you've got the same market segment. Then as you go a
5 little bit further, you've got HFCS in both, so that's
6 another -- holding all other factors constant. And then
7 ultimately you have one product labeled all natural and the
8 other not. So that's an example of trying to hold as many
9 things as possible constant with one difference, the
10 difference being the attribute you want to measure the
11 impact of.

12 Q. And that analysis you didn't do it -- strike
13 that.

14 What I'm trying to understand is that you
15 didn't do research and come to the conclusion that
16 Snapple -- that [REDACTED] was the only
17 product that Snapple could be benchmarked against, did you?

18 A. Well, we looked at [REDACTED] as well. So maybe
19 I'm a little confused. I looked at [REDACTED] There were
20 other products that we were aware of, say [REDACTED]
21 that might have been cold filled, had preservatives, had
22 artificial flavoring, had artificial colors, artificial
23 sweeteners. And now you have five, six, seven, ten
24 attributes that are different rather than one. So there's
25 always data constraints, I'm not going to argue about

Page 166

Page 168

1 Q. Yes.
2 A. -- or are you asking something different?
3 Q. I'm asking you to explain footnote 107 and your
4 reference to [REDACTED] brand-related price
5 premium?
6 A. Okay. It's a little on the complicated side, so
7 if you'll bear with me. My understanding of the
8 plaintiffs' allegations is that there's a price premium
9 associated with Snapple's labeling of all natural when it
10 contains HFCS. That's my understanding of your
11 allegations, that consumers were paying a higher amount of
12 price premium because of that. One of the benchmarks I
13 used was [REDACTED] And we did a comparison
14 there. And this was really in an abundance of caution.
15 Now, we saw that on average Snapple's price was lower than
16 the [REDACTED] price, so I didn't see any evidence of
17 a systematic price premium, but I was just trying to think
18 ahead where somebody could say, Well, there's this other
19 premium in the [REDACTED] and it has to do with their brand
20 name. And so because you're telling me that Snapple is
21 priced less than the [REDACTED] it could be that there's
22 this other component in the [REDACTED] So I was just
23 trying to look at things from every different direction.
24 And so what I did was -- I said, Well, if we just look at
25 the diet side, we looked at the diet [REDACTED] and we looked

1 analysis, but looking at some of the prices we saw in the
2 data and we just try to describe it in the footnote. But
3 looking at the prices we saw in the data, at least kind of
4 mentally doing that exercise, we didn't see any reason that
5 would alter our conclusions that I was drawing with [REDACTED]
6 [REDACTED] as the benchmark.
7 Q. But it's possible that once you do a formal
8 analysis along the -- the brand-related premium that it may
9 alter the numbers that you calculated?
10 A. I was --
11 MR. BECKWITH: Objection, mischaracterize.
12 A. Yeah, I was very comfortable with what we saw
13 that would not alter; otherwise, I would have taken it
14 further.
15 Q. (BY MR. LAPINSKI) And is that analysis set forth
16 anywhere in the footnote?
17 A. The footnote says what we did. That's why I said
18 that in the footnote.
19 Q. Well, the footnote says that you performed a
20 price comparison between the average retail prices of
21 Snapple all natural ice tea and that of [REDACTED] in
22 grocery stores in New York. Taking into account the
23 consideration of that the average retail prices of [REDACTED]
24 [REDACTED] carried a brand-related price premium. My
25 question is: Is there anywhere in the footnote or any of

Page 167

Page 169

1 at the diet Snapple, and if there's a difference there.
2 And if we recognize that difference and then kind of apply
3 it even on the claimed all natural side, does that alter
4 the conclusion. And I reached the conclusion that, no, it
5 doesn't alter my conclusions if I do that sort of analysis.
6 That's what that footnote is trying to say.
7 Q. And you did do that analysis, you looked at
8 [REDACTED] -- the [REDACTED] diet and the Snapple diet --
9 A. Yes.
10 Q. -- looked at the price difference, if any,
11 between the two of those and then --
12 A. And said, Okay, if you look in the --
13 Q. Let me -- let me finish my question. Now, I got
14 to think where I was in my question.
15 You looked at [REDACTED] diet, you looked at
16 Snapple diet. You looked at a price difference, if any,
17 between the two of them. And then in layman's terms backed
18 out the premium that you saw there from the [REDACTED] -- the
19 [REDACTED] price that you were comparing to Snapple; is that
20 correct?
21 A. Essentially that's what we kind of looked at,
22 yes.
23 Q. Okay. And that's an analysis that you did?
24 A. That's an -- I mean, it was -- yes. I mean, it
25 wasn't a -- you know, it wasn't a full-blown formal

1 the documents that you've provided or relied upon that show
2 the analysis that you did of the [REDACTED] diet product and
3 the Snapple diet product?
4 A. No. So what Mr. Goedde could do is just look at
5 the data and he would be able to just look at the data by
6 inspection and see if there's differences and apply it
7 over. It wasn't that complicated of an analysis.
8 Q. And what -- what specific data are you referring
9 to?
10 A. So you got the [REDACTED] diet data that's, I
11 believe, in some of the spreadsheets that have been turned
12 over. You've got the Snapple diet data that's in the
13 spreadsheets that were turned over. Now, at that point you
14 can choose how you want to look at it, how you want to
15 aggregate, whether you do it on package size or whether you
16 do it in geographic area. But just compare those prices,
17 see the difference, and then you can easily just see
18 whether that causes a meaningful change in what's reported
19 in my report. That's what I'm saying.
20 Q. In regard to your benchmark approach, if
21 wholesale prices are used in benchmark analysis then the
22 actual price paid by the consumer doesn't play a role in
23 the analysis, correct?
24 A. I just -- I need the question again.
25 Q. If the wholesale price is used in a benchmark

<p style="text-align: right;">Page 170</p> <p>1 analysis, then the actual price paid by the consumer is 2 isn't a factor, correct? 3 A. Here's where I'm stuck. If we were extracting 4 away to some other analysis, some other case then maybe I 5 could answer your question. I'm just always trying to 6 understand your questions in the context of what I 7 understand the allegations of this case are. 8 And so I look at things every which way I 9 can, but I'm ultimately also coming back to my 10 understanding that you contend -- or the plaintiffs 11 contend that the final consumer paid a price premium at the 12 retail level. So we can look at the wholesale level and I 13 did look at the data that I had. And I don't see any 14 evidence of Snapple extracting this price premium or this 15 gain. But I'm just stuck a little bit in your question 16 about the retail not playing a role if we just look at the 17 wholesale level. Then I'm kind of lost of where we're 18 going in the case a little bit. So maybe just ask me to 19 assume that way, but that's the problem I have with the 20 question. 21 Q. Well, I guess what I'm asking you to do is I'm 22 asking you to make an assumption that you're going to apply 23 the wholesale price to the benchmark analysis. And 24 assuming that you use a wholesale price instead of a retail 25 price, then the retail price paid by the consumer would not</p>	<p style="text-align: right;">Page 172</p> <p>1 you be able to remove the channel of distribution as a 2 factor in your analysis? 3 A. My understanding is -- 4 MR. BECKWITH: I'm going to object real 5 quick. It calls for a hypothetical. 6 A. I don't see how you remove it since my 7 understanding is that the manufacturers do charge different 8 prices at the different -- in the different channels of 9 distribution. 10 Q. (BY MR. LAPINSKI) And when you say -- 11 A. So you'd -- even in the most simple world, you'd 12 have three different prices. 13 Q. And what -- 14 A. I'm sorry. I way underestimated that. You'd 15 have one price for each channel of distribution. 16 Q. You'd have one price for each channel of 17 distribution, by channel of distribution you mean a grocery 18 store? 19 A. Truck store, convenient store, mass 20 merchandisers, kiosks, whatever those channels. So you 21 only have data on -- and we've only -- we were only able to 22 get data on drugstores, convenience stores and grocery 23 stores. Those are not the only channels of distribution. 24 There's mass merchandisers and there's other channels of 25 distribution as well.</p>
<p style="text-align: right;">Page 171</p> <p>1 be a factor, correct? 2 MR. BECKWITH: Objection, asked and 3 answered. 4 A. When you say it wouldn't be a factor, I keep 5 losing you. 6 Q. (BY MR. LAPINSKI) It wouldn't be a factor that 7 you would consider in your benchmark analysis? 8 MR. BECKWITH: Same objection. 9 Q. (BY MR. LAPINSKI) If you're using the wholesale 10 price instead of the retail price, then the retail price 11 paid by the consumer would not be a factor? 12 A. I could do a benchmarking at the wholesale level 13 if all the competitors were willing to provide that data. 14 And I can do that analysis. But ultimately I think a 15 question too is, the wholesale price is a derived demand 16 from the final market price. In other words, how much 17 Snapple is able to get at the wholesale level is derived 18 from a demand for the final product, right. And then you 19 start backing off the various margins people have to get 20 into the distribution chain. It's always true at the 21 manufacturing level that that's a derived demand from what 22 the final consumer is willing to pay. So I wouldn't 23 necessarily divorce the entire analysis. I could still see 24 a role for the retail analysis. 25 Q. If -- if you're using wholesale price data would</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. But the -- the data that you did have -- 2 A. I'm talking about at the retail level, but that's 3 why I'm saying that whole chain of data, if you were to 4 look at -- do the full-blown analysis. 5 Q. Well, the data that you have in regard to prices 6 charged by Snapple to -- through the different channels of 7 distribution, were there price differences? 8 A. In the different channel -- I think -- I don't 9 remember exactly the data. My understanding is there's a 10 difference by channel distribution. I would have to go 11 back and look to see exactly what those are. 12 Q. If there wasn't a price difference in the 13 different channels of distribution then -- 14 A. Then that wasn't important to Snapple and their 15 pricing. 16 Q. Okay. And that wouldn't -- that wouldn't be a 17 factor that you would consider in the benchmark analysis? 18 MR. BECKWITH: Objection, hypothetical. 19 A. It depends. 20 Q. (BY MR. LAPINSKI) What does it depend on? 21 A. Well, it is always true that there's a difference 22 between theoretically what you want to do and then when you 23 get the data, what actually happens. So my -- it 24 depends -- answer depends on once you start getting the 25 data in and you're looking at it, you start realizing some</p>

Page 178

Page 180

1 A. Okay.

2 Q. From an economic standpoint, what's the relevance
3 of significant or meaningful?

4 A. Can we go to that section in my report where you
5 were thinking of.

6 Q. We can. Paragraph 30, It is my understanding
7 that Snapple has retained Dr. Michael Mazis to determine
8 whether all natural labeling of Snapple's all natural
9 products played a significant or meaningful role.

10 And I just want -- I just want an
11 understanding as to what you mean by significant or
12 meaningful?

13 A. In that context it would be whatever Snapple and
14 Dr. Mazis determined to be significant and meaningful.
15 That wasn't my definition there. That was my understanding
16 of what he was asked to do.

17 Q. That would -- that's your understanding of what
18 he was asked to do, but your conclusion is that because he
19 concludes that all natural was not part of Snapple's
20 advertisements in a significant or meaningful way that --
21 strike that.

22 A. You know, another way to say this -- just to be a
23 little helpful. There's further explanations on A, B and

24 C. And I think that gives, at least to me, some guidance
25 as to what Mr. Mazis -- Dr. Mazis was thinking along those

1 [REDACTED] That all natural isn't -- doesn't play
2 a prominent -- or it plays almost no role in the
3 advertising. I'm saying all of that is consistent with the
4 opinion I'm giving that individual inquiry would be
5 required.

6 Q. I may have misunderstood your previous answer, so
7 let me -- let me test my understanding.

8 A. Sure.

9 Q. What you're saying is that you provide
10 information in here in regard to Dr. Mazis' findings?

11 A. Yes.

12 Q. However, even if you were to take out Dr. Mazis'
13 findings, your findings would still be the same as what
14 they are?

15 A. Absolutely, yes.

16 Q. Okay. I misunderstood your previous answer. I
17 apologize.

18 If you will turn to the latter part of your
19 report where you address Dr. Goedde's findings.

20 A. Okay. So turning to page 51 where the Roman
21 numeral section 11 starts.

22 MR. BECKWITH: 51, is that what you said?

23 MR. LAPINSKI: 51 is where it starts.

24 MR. BECKWITH: Thank you.

25 Q. (BY MR. LAPINSKI) Now, I believe you testified

Page 179

Page 181

1 lines in terms of significant or meaningful. So, for
2 example, on B, the all natural message played almost no
3 role in Snapple's advertising. So I think that gives some
4 guidance as to what he was probably thinking.

5 Q. And in regard to the all natural message playing
6 almost no role in Snapple's advertising, that's not
7 something that you yourself researched?

8 A. That's correct.

9 Q. Okay. You rely on Dr. Mazis for his findings as
10 you reflect here in B?

11 A. I'm reporting his findings -- actually, with
12 respect to that particular issue, with all due respect to
13 Dr. Mazis, I don't need him one way or another for my
14 analysis on that particular point. But that point is
15 supportive of what I'm trying to say on the individualized
16 inquiry, but if he has never given that opinion, it doesn't
17 affect my analysis.

18 Q. Your analysis would also be that all natural was
19 not -- did not play a significant role -- significant or
20 meaningful role?

21 A. No, no. I'm not giving those opinions. Those
22 are Dr. Mazis' or Mazis' opinion. I'm looking at -- all the
23 data that I've seen tells me individualized inquiry is
24 required. He, in a sense, is giving a consistent opinion
25 with some actual examples, [REDACTED]

1 earlier that your issue with Dr. Goedde's findings are not
2 in the use of a benchmark or yardstick approach. The issue
3 you have is that he did not consider several factors that
4 would need to be considered; is that correct?

5 A. Actually, I wouldn't describe it that way at all.

6 Q. Okay.

7 A. What I testified earlier is, under the
8 appropriate circumstances a yardstick or a benchmarking
9 approach is a generally accepted methodology, under the
10 appropriate circumstances. I don't see it to be an
11 appropriate answer for the inquiry in these facts and
12 circumstances given the totality of what's in my report.
13 You can't use a yardstick approach, come up with a common
14 proof of alleged injury, say that will apply to all class
15 members using a yardstick approach to do that. In light of
16 everything that's in my report that forces one to the
17 conclusion that you need individual inquiry.

18 Q. Which mean all of the denominators . . .

19 A. All the reasons why there's price differences,
20 all the reasons why people have paid different amounts,
21 given my understanding of the plaintiffs' theories.

22 So here's the easiest way to do it. If he
23 wants to use that -- he said this in his deposition. You
24 want to use a yardstick approach and you say that there's a
25 nickel price premium, well, we know people are paying

Page 182

1 between -- this is roundly speaking [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] some people knew about HFCS, some
6 people used a promotion, some people used a two-for-one
7 coupon. And I'm just saying, you can't take a general
8 yardstick approach and end up with anything close to --
9 even from a class perspective, accepting plaintiffs'
10 theories, any proper compensation to the individual class
11 members under the -- under the theories of the case.

12 Q. Because of the various factors that you just --

13 A. Right. Said.

14 Q. -- mentioned now, and that are included in the
15 your report?

16 A. Right. That are just summarizing.

17 Q. Now, you were able to use a benchmark approach to
18 show that there was no premium, but what you're saying is
19 that you can't use a benchmark approach to show that there
20 was a premium?

21 A. Actually, let's be careful. Because remember
22 what I said at the very beginning -- I said, I'm going to
23 say a big long answer, that's my opinion, and then we're
24 going to go shorthand from there. Okay. I don't know if
25 you remember this. Remember I said, Here's all the reasons

Page 183

1 why you need individual inquiry. I gave a big long answer
2 to that. That is my opinion. Then I recognize, I do have
3 some average retail price data, average every day price
4 data and average promotion price data. Recognizing that
5 the average data masks some of the variations, let me just
6 see what I can draw -- what conclusions I can draw. And
7 the conclusion I drew in addition to the need for
8 individual inquiry, is that when you look on an average
9 basis you don't see the systematic price increase. So then
10 I said from there, We can take all the shorthand you want,
11 but let's never forget what my real opinion is.

12 MR. LAPINSKI: You know what, Van, let me
13 take five minutes.

14 MR. BECKWITH: Okay.

15 (Recess from 2:47 p.m. to 2:57 p.m.)

16 Q. (BY MR. LAPINSKI) Dr. Ugone, is it your
17 position, as an economist, that you're unable to use survey
18 studies and market research in order to analyze incremental
19 value in a product?

20 A. What I state in my report is --

21 Q. Well, this is a general question.

22 A. Oh, we're extracting away from --

23 Q. You as an economist.

24 MR. BECKWITH: Could you repeat it or have
25 it read back.

Page 184

1 MR. LAPINSKI: I'll repeat it.

2 MR. BECKWITH: Sorry.

3 Q. (BY MR. LAPINSKI) Is it your position as an
4 economist that you're unable to use survey studies and
5 market research in order to analyze incremental value?

6 A. If we're just talking about in the abstract, I
7 think surveys can have a time and a place.

8 Q. On page 54 of -- I apologize. On page 55 of your
9 report, paragraph 81, states, With respect to the use of
10 studies and market research, it is widely acknowledged that
11 there is a significant difference between what a person
12 responding to a survey claims they would be willing to pay
13 and what a person would actually pay when faced with a
14 variety of options in real-life marketplace setting.

15 A. Yes.

16 Q. Okay. And below that you have three different
17 statements or hypothesis that you put there. The first
18 one, A, willingness to pay versus market price. What is
19 the basis of that opinion?

20 A. I'm going to give a multipart answer here. Every
21 economist will tell you there's a difference between -- let
22 me try it this way. Every economist will say, You know,
23 don't tell me what you think, tell me what you do. Don't
24 tell me what you say, tell me what you do. So actual
25 revealed preference in the marketplace in terms of actual

Page 185

1 purchasing behavior, obviously, is more accurate than just
2 we -- what people say.

3 In other words, when push comes to shove and
4 you have to spend your dollars and have a limited budget
5 constraint, that could be very different from what people
6 say. So that's sort of the first observation.

7 The second observation is -- and here's the
8 easiest way to say it, a willingness to pay versus the
9 market price. You only have to pay a dollar, let's say,
10 for a bottle of water. But if you were down here in Texas
11 on August 10th and it's 105 degrees and humid, you might be
12 willing to pay \$2, but all you have to pay is a dollar
13 because that's the market price.

14 And there's even a concept in economics
15 called consumer surplus. And that's the gain you get as a
16 consumer because there's many times for many products your
17 willingness to pay is greater than the market price. Those
18 are all the things you have to be careful with in surveys,
19 so I'm not saying, you can never use surveys. I'm saying
20 they have a time and a place. And you have to make sure
21 you don't misuse them when you're addressing a particular
22 question. And here I've given you three examples of where
23 you want to be careful not to misuse the survey. And all
24 of that is abstracting away from a survey, just like the
25 average data is going to mask the differences -- the

<p style="text-align: right;">Page 186</p> <p>1 individual differences between the consumers that we know 2 exist in this case. And it may at best give you one number 3 that is not going to be true for any of the consumers. So 4 that ultimately is what's going on. But with respect to 5 this willingness to pay I think I've tried to be complete 6 in my answer for you. 7 Q. The willingness to pay versus market price that 8 opinion is not based upon any specific information that is 9 put -- is put forward here in the documents that you've 10 produced. That's based upon your experience as an 11 economist? 12 A. You can probably find it in those books. I mean 13 it's such a standard economic theory that I, you know, it's 14 like if the sky's blue, I mean, I . . . 15 Q. That's what I want -- that's what I wanted to 16 understand. I wanted to understand whether or not you were 17 stating this as a standard economic theory or whether there 18 was conclusions that you had drawn based upon the documents 19 that you've looked at in this case in order to make that 20 statement. 21 A. Correct. 22 Q. So it's the former, it's a standard economic 23 theory? 24 A. Yes. 25 Q. Okay. As far as B is concerned, the opinion in</p>	<p style="text-align: right;">Page 188</p> <p>1 you're taking a survey designed for one purpose and trying 2 to draw inferences for another purpose, did the consumer 3 really take into account their budget constraint when 4 you're looking at a willingness to pay for these different 5 attributes. 6 Q. And, again, that's based on a common economic 7 principle as compared to research and review of documents 8 that were made available to you in this case? 9 A. Yes, yes. 10 Q. Okay. And when we first started talking about 11 these three paragraphs, you reached over and you grabbed 12 two economic books. And am I correct that the two economic 13 books that you reached for, are the two books that are 14 cited in footnote 16 of your report? 15 A. Yes. And I can tell you where to look. So look 16 up -- if you want to have somebody look it up, look up the 17 concept of consumer surplus. It's the area under the 18 demand curve above the price you have to pay. 19 MR. LAPINSKI: I have no further questions. 20 MR. BECKWITH: We'll reserve all questions 21 till the time of trial. 22 (Deposition was concluded at 3:04 p.m.) 23 24 25</p>
<p style="text-align: right;">Page 187</p> <p>1 B, overemphasis of surveyed attribute. Same situation -- 2 we're on page 55. 3 A. I think this is generally accepted. I think the 4 point here was, again, if you're going to apply a survey 5 you need to make sure you don't fall into potential 6 pitfalls of taking a survey that might actually be designed 7 for one purpose and apply it to another purpose. So I'm 8 not saying all surveys are deficient, because there's 9 people out there that specialize in that and actually do 10 quite a good job. But the question is, a survey is often 11 designed for one particular purpose and where you have to 12 be careful is when you take something designed for one 13 purpose and apply it to another purpose, that's when I say, 14 Well, wait a minute, let's be careful about these factors 15 I'm bringing up. 16 Q. And as far as the third one, Failure to consider 17 budget constraints. 18 A. So the example there is imagine a survey that 19 says, Well, how much more would you have to -- would you be 20 willing to pay for, you know, for a blue car rather than a 21 red car, so you say \$100 or \$1,000, I like blue that much. 22 Well, but when you have to write that check and you take 23 into account, well, I also have to buy food this month. 24 I've got to pay my rent and my mortgage. When you bring in 25 the budget constraint, you have to be careful that when</p>	<p style="text-align: right;">Page 189</p> <p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: _____ DATE OF DEPOSITION: _____ 3 PAGE LINE CHANGE REASON 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>